आवश्यक

संख्या-112/2021/2739/26-3-2021

प्रेषक,

के0 रविन्द्र नायक,
प्रमुख सचिव,
उ0प्र0 शासन।

सेवा में,

समस्त मण्डलायुक्त/जिलाधिकारी,
उत्तर प्रदेश।

समाज कल्याण अनुभाग-3 लखनऊ: दिनांक 28 सितम्बर, 2021

विषयः शासनादेश दिनांक 01.09.2017 व दिनांक 25.04.2018 के विरूद्ध मा0 उच्च न्यायालय, इलाहाबाद में योजित पीआईएल संख्या-496/2021 डा0 भीमराव अम्बेडकर, अनुसूचित जाति जनजाति उत्थान सेवा समिति एवं अन्य बनाम यूनियन ऑफ इण्डिया एवं 07 अन्य में दिनांक 02.09.2021 को पारित आदेश के अनुपालन के सम्बन्ध में।

महोदय,

उपर्युक्त विषयक शासनादेश संख्या-136/2017/31वीआईपी/26-3-2017-3(1)/ 2013 दिनांक 01.09.2017 (संलग्नक-1) व शासनादेश संख्या-35वीआईपी/26-3-2018 दिनांक 25.04.2018 (संलग्नक-2) का कृपया सन्दर्भ ग्रहण करने का कष्ट करें, जिसके द्वारा कमकर पेशागत/स्थानीय पुकारू नाम से पहचाने जाने वाले खरवार जाति के व्यक्तियों को जाति प्रमाण पत्र निर्गत किये जाने के निर्देश दिये गये है।

2- उक्त के शासनादेशों के विरूद्ध मा0 उच्च न्यायालय, इलाहाबाद में योजित पीआईएल संख्या-496/2021 डा0 भीमराव अम्बेडकर, अनुसूचित जाति जनजाति उत्थान सेवा समिति एवं अन्य बनाम यूनियन ऑफ इण्डिया एवं 07 अन्य में मा0 न्यायालय द्वारा दिनांक 02.09.2021 (संलग्नक-3) को निम्वत आदेश पारित किये गये है:-

Writ petition has been filed to challenge the orders dated 01.09.2017 and 25.04.2018 by which the State Government issued directions for issuance of caste certificate in favour of 'Kamkar' treating them to be 'Kharwar'. Same direction has been given for caste 'Pukaru'. The direction aforesaid has been challenged through this writ petition mainly on the ground of competence of the State Government.

It is submitted that as per Article 342 of the Constitution of India, it is only the Parliament which is having power to declare a caste to fall in the category of Schedule Caste or Schedule Tribe. The State Government cannot declare any caste to fall in the category of Schedule Caste or Schedule Tribe and for that even no authority to substitute or give interpretation to the Notification issued by the Parliament.

Coming to the facts of the case, he submits that Parliament has issued a Notification published in the Gazette declaring the caste 'Kharwar' to fall in the category of Schedule Tribe in Districts Deoria, Ballia, Gazipur, Varanasi and Sonbhadra. It was by way of Schedule Caste/Schedule Tribe Order (Amendment) Act, 2002. The State Government was thus not authorized to pass any order to include any other caste to fall in the category of Schedule Tribe or for that to be a sub-caste of the caste notified by the Government of India to fall in the category of Schedule Tribe. The challenge to the order has been made precisely on that ground.

To support the argument, reference of the judgment of the Apex Court in the case of 'State of Maharashtra vs. Milind and others' (2001) 1 SCC 4 has been given. It has been held that the State Government has no authority to make interpretation or substitution in the Notification issued by the Parliament. It cannot declare any caste to fall in the category of Schedule Tribe other than notified by the Parliament. The prayer is accordingly to set aside the orders under challenge.

Learned Additional Advocate General has contested the writ petition. He submits that the orders under challenge are clarificatory in nature. They did not substitute or modify the Notification issued by the Parliament. They are rather to restrain issuance of caste certificate to 'Kamkar' and 'Pukaru'. Caste certificate of Schedule Tribe can be given in consonance to the Notification issued by the Parliament and thereby the impugned orders impose a bar for issuance of caste certificate in favour of 'Kamkar' or 'Pukaru'. It has wrongly been interpreted for a direction to

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1- यह शासनादेश इलेक्ट्रानिकली जारी किया गया है, अतः इस पर हस्ताक्षर की आवश्यकता नही है।

2- इस शासनादेश की प्रमाणिकता वेब साइट http://shasanadesh.up.gov.in से सत्यापित की जा सकती है।

http://shasanadesh.up.gov.in

award Schedule Caste certificate in favour of two castes named above treating them to be 'Kharwar'. The prayer is accordingly to dismiss the writ petition or in the alternative, to clarify the position given above.

We have considered the rival submissions of the parties and perused the record.

Perusal of the orders under challenge shows a direction for issuance of caste certificate after due verification of the relevant material. It further directs that the caste certificate should not be given based on trade or profession occupied by the caste. It should not be issued on the Fasli of 1359 but based on servant record. The order, however, makes a reference that 'Kamkar' and 'Pukaru' are either sub-caste or the profession adopted by 'Kharwar'. This is nothing but an interpretation or substitution of the Notification issued by the Parliament though the competence for it does not lie with the State Government.

In view of the of the judgment of the Apex Court in the case of Milind and others (supra), we dispose of this writ petition with the direction to the State Government not to issue an order in conflict of the Notification of the Parliament declaring certain castes to fall in the category of Schedule Caste or Schedule Tribe and for that not to issue caste certificate either of Schedule Caste or Schedule Tribe other than the caste notified by the Parliament.

With the aforesaid clarification, this writ petition is disposed of.

3- भारत सरकार की अधिसूचना अनुसूचित जातियां एवं अनुसूचित जनजातियां आदेश (संशोधन) अधिनियम 1976 (संलग्नक-4) में प्रदेश की अनुसूचित जाति की सूची के क्रमांक-46 पर खरवार (बनवासी को छोड़कर) सूचीबद्ध है। साथ ही भारत सरकार की अधिसूचना अनुसूचित जातियां एवं अनुसूचित जनजातियां आदेश (संशोधन) अधिनियम 2002 (संलग्नक-5) में प्रदेश की अनुसूचित जनजाति की सूची के क्रमांक-7 पर खरवार, खैरवार जाति जनपद देवरिया, बलिया, गाजीपुर, वाराणसी एवं सोनभद्र में सूचीबद्ध है।

4- अतएव मा0 न्यायालय के उक्त आदेशों के अनुपालन में सम्यक विचारोपरान्त शासनादेश संख्या-136/2017/31वीआईपी/26-3-2017-3(1)/2013 दिनांक 01.09.2017 व शासनादेश संख्या-35वीआईपी/26-3-2018 दिनांक 25.04.2018 को निष्प्रभावी/निरस्त करते हुए मुझे यह कहने का निदेश हुआ है कि कृपया भारत सरकार की अधिसूचना अनुसूचित जातियां एवं अनुसूचित जनजातियां आदेश (संशोधन) अधिनियम 1976 व 2002 के अनुरूप प्रदेश के खरवार जाति के व्यक्तियों द्वारा प्रस्तुत दस्तावेजों/ साक्ष्यों का भली-भांति जांच-पड़ताल/निरीक्षण करते हुए नियमानुसार अनुसूचित जाति/अनुसूचित जनजाति का जाति प्रमाण पत्र निर्गत करने के सम्बन्ध में आवश्यक कार्यवाही करने का कष्ट करें।

5- यदि किसी भी स्तर पर गलत जाति प्रमाण पत्र निर्गत किये जाने का प्रकरण संज्ञान में आता है तो शासन द्वारा निर्धारित त्रिस्तरीय समिति (जनपद, मण्डल एवं राज्य स्तरीय स्क्रूटनी कमेटी) के समक्ष प्रस्तुत करें, उसे निरस्त किये जाने के सम्बन्ध में समयबद्ध कार्यवाही सुनिश्चित की जाए।

भवदीय,

(के0 रविन्द्र नायक)
प्रमुख सचिव।

पृ0सं0-112/2021/2739(1)/26-3-2021-तददिनांक-

प्रतिलिपि-निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषितः-

1-अध्यक्ष, राजस्व परिषद उ0प्र0, आयुक्त व सचिव राजस्व परिषद उ0प्र0।

2-मण्डलायुक्त, बस्ती/गोरखपुर/आजमगढ़/वाराणसी/मिर्जापुर मण्डल।

3-निदेशक, समाज कल्याण/अनुसूचित जाति एवं अनुसूचित जनजाति शोध एवं प्रशिक्षण संस्थान, लखनऊ।

आज्ञा से,

(राकेश कुमार सचान)
उप सचिव।

1- यह शासनादेश इलेक्ट्रानिकली जारी किया गया है, अतः इस पर हस्ताक्षर की आवश्यकता नही है।

2- इस शासनादेश की प्रमाणिकता वेब साइट http://shasanadesh.up.gov.in से सत्यापित की जा सकती है।

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संलग्नक-1

संख्या-1-2/2017/31 वी.आई.पी./26-3-2017-3(1)/2013

प्रेषक,

मनोज सिंह,
प्रमुख सचिव,
उत्तर प्रदेश शासन।

सेवा में,

जिलाधिकारी,
गोरखपुर, देवरिया, गाजीपुर, कुशीनगर, चन्दौली, बलिया, महाराजगंज
मऊ एवं सोनभद्र।

समाज कल्याण अनुभाग-3 लखनऊ : दिनांक अगस्त, 2017

विषयः कमकर पेशागत/स्थानीय पुकारू नाम से पहचाने जाने वाले खरवार जाति के व्यक्तियों को जाति प्रमाण पत्र जारी किये जाने के सम्बन्ध में।

महोदय,

उपर्युक्त विषयक शासन के पत्र संख्या-96 मु0स0/26-3-2015, दिनांक-20.07.2015 का कृपया संदर्भ ग्रहण करने का कष्ट करें, जिसके द्वारा खरवार जाति के पात्र व्यक्तियों को जाति प्रमाण पत्र निर्गत किये जाने के सम्बन्ध में नियमानुसार आवश्यक कार्यवाही किये जाने के निर्देश दिये गये थे।

2- इस सम्बन्ध में अवगत कराना है कि भारत सरकार द्वारा अधिनियमित अनुसूचित जातियां एवं अनुसूचित जनजातियां आदेश (संशोधन) अधिनियम-1976 के द्वारा उत्तर प्रदेश के लिये निर्धारित अनुसूचित जातियों की सूची के क्रमांक-46 पर खरवार (वनवासी को छोड़कर) तथा अनुसूचित जातियां एवं अनुसूचित जनजातियां आदेश (संशोधन) अधिनियम-2002 के द्वारा खरवार, खैरवार को जनपद-देवरिया, बलिया, गाजीपुर, वाराणसी एवं सोनभद्र में अनुसूचित जनजाति की सूची में वर्गीकृत किया गया है।

3- उक्त प्रकरण के सम्बन्ध में कतिपय जातीय सभा के प्रतिनिधियों के शिकायत के दृष्टिगत कि खरवार जाति के पात्र व्यक्तियों को कमकर कह कर जाति प्रमाण पत्र निर्गत नहीं किया जा रहा है। शासन द्वारा कमकर एवं खरवार जाति के सम्बन्ध में अनुसूचित जाति एवं अनुसूचित जनजाति शोध एवं प्रशिक्षण संस्थान द्वारा नृजातीय सर्वेक्षण अध्ययन कराया गया। सर्वेक्षण अध्ययन के अनुसार खरवार जाति के परिवार के सदस्यों द्वारा हलवाही, मजदूरी, पानी भरना एवं डोली उठाना, लकड़ी से कत्था बनाना एवं घरेलू नौकर का काम आदि पेशा आधारित कार्यों को किये जाने के कारण स्थानीय बोलचाल में इन्हें कमकर कहा जाता है। अतः कमकर कोई जाति/उपजाति या वर्ग न होकर मूलतः खरवार जाति का व्यवसाय आधारित (पेशागत) स्थानीय पुकारू नाम है। शासनादेश संख्या-3469/ 26-3-2010, दिनांक-26.10.2010 द्वारा जाति प्रमाण पत्र निर्गत किये जाने के सम्बन्ध में स्पष्ट दिशा-निर्देश दिये गये हैं कि जाति प्रमाण पत्र निर्गत करते समय राजस्व अधिकारियों को उस व्यक्ति के नाम के समक्ष लिखे जा रहे पेशागत सूचक शब्द अथवा उसके जीविकोपार्जन हेतु अपनाये जाने वाले व्यवसाय इत्यादि को ही जाति प्रमाण पत्र निर्गत करने का आधार नहीं माना जाना चाहिये, साथ ही जाति प्रमाण पत्र निर्गत करने हेतु केवल 1359 फसली को ही आधार न माना जाय, अपितु आवेदक के विषय में सही जानकारी प्राप्त करने के लिए गांव के तथा आस-पास के निर्विवादित परिवारों से स्थलीय पूँछताछ/जॉच-पड़ताल, कुटुम्ब रजिस्टर, शैक्षिक संस्थाओं की टी.सी. इत्यादि को जाति प्रमाण पत्र निर्गत करने का आधार माना जाय।

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1- यह शासनादेश इलेक्ट्रानिकली जारी किया गया है, अतः इस पर हस्ताक्षर की आवश्यकता नही है।

2- इस शासनादेश की प्रमाणिकता वेब साइट http://shasanadesh.up.gov.in से सत्यापित की जा सकती है।

4- शासनादेश संख्या-685/26-3-2011, दिनांक-28.02.2011 द्वारा जनपद स्तर पर जिलाधिकारी की अध्यक्षता में जाति प्रमाण पत्र के सत्यापन समिति का गठन किया गया है, जिसमें जाति प्रमाण पत्र न बनाये जाने, फर्जी अथवा त्रुटिपूर्ण होने एवं अन्य विसंगतियों के मामले निस्तारित किये जाने के निर्देश दिये गये हैं तथा शासनादेश संख्या-428/26-3-2011, दिनांक-27.01.2011 द्वारा मण्डल स्तर पर अपीलीय फोरम तथा शासनादेश दिनांक-05.01.1996 द्वारा राज्य स्तर पर राज्य स्तरीय स्क्रूटनी कमेटी का गठन किया गया है।

अतएव इस सम्बन्ध में मुझे यह कहने का निदेश हुआ है कि प्रस्तुत दस्तावेजों/साक्ष्यों का भली-भांति जाँच-पड़ताल/निरीक्षण करते हुये कमकर पेशागत/स्थानीय पुकारू नाम से पहचाने जाने वाले खरवार जाति के व्यक्तियों को जाति प्रमाण पत्र जारी किये जाने के सम्बन्ध में नियमानुसार आवश्यक कार्यवाही सुनिश्चित करने का कष्ट करें।

भवदीय,

(मनोज सिंह)
प्रमुख सचिव

पृ0सं0- 136/2017/31 वी.आई.पी.(1)/26-3-2017 तद्दिनांक-

प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषितः-

1- निदेशक, अनुसूचित जाति एवं अनुसूचित जनजाति शोध एवं प्रशिक्षण संस्थान, उ0प्र0 लखनऊ।

2- निदेशक, समाज कल्याण/जनजाति विकास, उ0प्र0 लखनऊ।

आज्ञा से,

(कामता प्रसाद)
अनुसचिव

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page-541

1- यह शासनादेश इलेक्ट्रानिकली जारी किया गया है, अतः इस पर हस्ताक्षर की आवश्यकता नही है।

2- इस शासनादेश की प्रमाणिकता वेब साइट http://shasanadesh.up.gov.in से सत्यापित की जा सकती है।

संलग्नक-2

संख्या-35वी0आई0पी0/26-3-2018

प्रेषक,

मनोज सिंह,
प्रमुख सचिव,
उत्तर प्रदेश शासन

सेवा में,

जिलाधिकारी,
कुशीनगर।

समाज कल्याण अनुभाग-3 लखनऊ: दिनांक: 25 अप्रैल, 2018

विषयः- जाति प्रमाण-पत्र के सम्बन्ध में।

महोदय,

उपर्युक्त विषयक शासन के पत्र संख्या-2190/26-3-08-10(21)/08 दिनांक 02.07.2008 (छायाप्रति संलग्न) का कृपया संदर्भ ग्रहण करने का कष्ट करें।

2- भारत का राजपत्र अनुसूचित जातियाँ एवं अनुसूचित जनजातियाँ (संशोधन) अधिनियम-1976 में उत्तर प्रदेश के लिये निर्धारित अनुसूचित जाति की सूची क्रमांक-46 पर खरवार (वनवासी को छोड़कर) जाति अंकित है। एवं भारत का राजपत्र अनुसूचित जातियाँ एवं अनुसूचित जनजातियाँ (संशोधन) अधिनियम-2002 में उत्तर प्रदेश के लिये निर्धारित अनुसूचित जनजाति की सूची क्रमांक-7 पर खरवार जाति अंकित है।

3- अतएव इस सम्बन्ध में अवगत कराते हुये मुझे यह कहने का निदेश हुआ है कि सम्यक्विचारोपरान्त शासन के पत्र संख्या-2190/26-3-08-10(21)/08 दिनांक 02.07.2008 को निष्प्रभावी/निरस्त किया जाता है। साथ ही मुझे यह भी कहने का निदेश हुआ है कि कृपया उक्त अधिनियम के आलोक में खरवार जाति के लोगों को जाति प्रमाण-पत्र जारी किये जाने के सम्बन्ध में नियमानुसार आवश्यक कार्यवाही सुनिश्चित करने का कष्ट करें।

संलग्नक-यथोक्त।

भवदीय,

(मनोज सिंह)
प्रमुख सचिव

पत्र संख्या-35वी0आई0वी0(1)/26-3-2018 तद्दिनांक-

प्रतिलिपि संलग्नक सहित कार्मिक अनुभाग-2, उ0प्र0 शासन को पत्र संख्या-1940/का-2/2007 दिनांक 17.12.2007 के संदर्भ में कृपया सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित।

आज्ञा से,

(रवि शंकर मिश्र)
अनु सचिव

pradeep.p.p

1- यह शासनादेश इलेक्ट्रानिकली जारी किया गया है, अतः इस पर हस्ताक्षर की आवश्यकता नही है।
2- इस शासनादेश की प्रमाणिकता वेब साइट http://shasanadesh.up.gov.in से सत्यापित की जा सकती है।

संलग्नक-3

Court No. - 29

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 496 of 2021

Petitioner :- Dr. Bheem Rao Ambedkar, Anusuchit Jati Janjati Utthan Sewa Samiti And Another
Respondent :- The Union Of India And 7 Others
Counsel for Petitioner :- Juned Alam
Counsel for Respondent :- A.S.G.I.,C.S.C.,K.R. Singh,Prabhakar Tripathi

Hon'ble Munishwar Nath Bhandari,Acting Chief Justice
Hon'ble Anil Kumar Ojha,J.

Order on Civil Misc. Intervener Application No.5 of 2021

Intervener application is allowed as otherwise not opposed.

Order on PIL

Writ petition has been filed to challenge the orders dated 01.09.2017 and 25.04.2018 by which the State Government issued directions for issuance of caste certificate in favour of 'Kamkar' treating them to be 'Kharwar'. Same direction has been given for caste 'Pukaru'. The direction aforesaid has been challenged through this writ petition mainly on the ground of competence of the State Government.

It is submitted that as per Article 342 of the Constitution of India, it is only the Parliament which is having power to declare a caste to fall in the category of Schedule Caste or Schedule Tribe. The State Government cannot declare any caste to fall in the category of Schedule Caste or Schedule Tribe and for that even no authority to substitute or give interpretation to the Notification issued by the Parliament.

Coming to the facts of the case, he submits that Parliament has issued a Notification published in the Gazette declaring the caste 'Kharwar' to fall in the category of Schedule Tribe in Districts Deoria, Ballia, Gazipur, Varanasi and Sonbhadra. It was by way of Schedule Caste/Schedule Tribe Order (Amendment) Act, 2002. The State Government was thus not authorized to pass any order to include any other caste to fall in the category of Schedule Tribe or for that to be a sub-caste of the caste notified by the Government of India to fall in the category of Schedule Tribe. The challenge to the order has been made precisely on that ground.

To support the argument, reference of the judgment of the Apex Court in the case of **'State of Maharashtra vs. Milind and others' (2001) 1 SCC 4** has been given. It has been held that the State Government has no authority to make interpretation or substitution in the Notification issued by the Parliament. It cannot declare any caste to fall in the category of Schedule Tribe other than notified by the Parliament. The prayer is accordingly to set aside the orders

1- यह शासनादेश इलेक्ट्रानिकली जारी किया गया है, अत: इस पर हस्ताक्षर की आवश्यकता नही है।
2- इस शासनादेश की प्रमाणिकता वेब साइट http://shasanadesh.up.gov.in से सत्यापित की जा सकती है।

under challenge.

Learned Additional Advocate General has contested the writ petition. He submits that the orders under challenge are clarificatory in nature. They did not substitute or modify the Notification issued by the Parliament. They are rather to restrain issuance of caste certificate to 'Kamkar' and 'Pukaru'. Caste certificate of Schedule Tribe can be given in consonance to the Notification issued by the Parliament and thereby the impugned orders impose a bar for issuance of caste certificate in favour of 'Kamkar' or 'Pukaru'. It has wrongly been interpreted for a direction to award Schedule Caste certificate in favour of two castes named above treating them to be 'Kharwar'. The prayer is accordingly to dismiss the writ petition or in the alternative, to clarify the position given above.

We have considered the rival submissions of the parties and perused the record.

Perusal of the orders under challenge shows a direction for issuance of caste certificate after due verification of the relevant material. It further directs that the caste certificate should not be given based on trade or profession occupied by the caste. It should not be issued on the Fasli of 1359 but based on servant record. The order, however, makes a reference that 'Kamkar' and 'Pukaru' are either sub-caste or the profession adopted by 'Kharwar'. This is nothing but an interpretation or substitution of the Notification issued by the Parliament though the competence for it does not lie with the State Government.

In view of the of the judgment of the Apex Court in the case of **Milind and others** (supra), we dispose of this writ petition with the direction to the State Government not to issue an order in conflict of the Notification of the Parliament declaring certain castes to fall in the category of Schedule Caste or Schedule Tribe and for that not to issue caste certificate either of Schedule Caste or Schedule Tribe other than the caste notified by the Parliament.

With the aforesaid clarification, this writ petition is disposed of.

Order Date :- 2.9.2021
Madhurima

(Anil Kumar Ojha, J.) (Munishwar Nath Bhandari, ACJ)

1- यह शासनादेश इलेक्ट्रानिकली जारी किया गया है, अत: इस पर हस्ताक्षर की आवश्यकता नही है।
2- इस शासनादेश की प्रमाणिकता वेब साइट http://shasanadesh.up.gov.in से सत्यापित की जा सकती है।

1761/26-8-2020
संलग्नक-4

रजिस्ट्री सं० डी०-(डी)-72 REGISTERED No. D-(D)-72

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
भाग II—खण्ड 1
PART II—Section 1
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 1511] नई दिल्ली, सोमवार, सितम्बर 20, 1976/भाद्र 29, 1898
No. 1511] NEW DELHI, MONDAY, SEPTEMBER 20, 1976/BHADRA 29, 1898

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(Legislative Department)

New Delhi, the 20th September, 1976/Bhadra 29, 1898 (Saka)

The following Act of Parliament received the assent of the President on the 18th September, 1976, and is hereby published for general information:—

THE SCHEDULED CASTES AND SCHEDULED TRIBES ORDERS (AMENDMENT) ACT, 1976

No. 108 OF 1976

[18th September, 1976]

An Act to provide for the inclusion in, and the exclusion from, the lists of Scheduled Castes and Scheduled Tribes, of certain castes and tribes, for the re-adjustment of representation of parliamentry and assembly constituencies in so far as such re-adjustment is necessiatated by such inclusion of exclusion and for matters connected therewith.

Be it enacted by Parliament in the Twenty-seventh Year of the Republic of India as follows:—

Short title and Commencement.

1. (1) This Act may be called the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "census authority" means the Registrar General and ex officio Census Commissioner for India;

(b) "Commission" means the Election Commission appointed by the President under article 324 of the Constitution;

(c) "Delimitation Act" means the Delimitation Act, 1972;

(d) "last census" means the census held in India in 1971;

1- यह शासनादेश इलेक्ट्रानिकली जारी किया गया है, अत: इस पर हस्ताक्षर की आवश्यकता नही है।
2- इस शासनादेश की प्रमाणिकता वेब साइट http://shasanadesh.up.gov.in से सत्यापित की जा सकती है।

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(e) "Scheduled Castes Order" means the Constitution (Scheduled Castes) Order, 1950, made by the President under article 341 of the Constitution;

(f) "Scheduled Tribes Orders" means the Constitution (Scheduled Tribes) Order, 1950 and the Constitution (Andaman and Nicobar Islands) Scheduled Tribes Order, 1959, made by the President under article 342 of the Constitution;

(g) "State" means a State included in the Scheduled Castes Order and the Scheduled Tribes Orders, and includes the Union territory of the Andaman and Nicobar Islands;

Amendment of Scheduled Castes Order

3. The Scheduled Castes Order is hereby amended in the manner and to the extent specified in the First Schedule.

Amendment of Scheduled Tribes Orders

4. The Scheduled Tribes Orders are hereby amended in the manner and to the extent specified in the Second Schedule.

Determination of population of Scheduled Castes or Scheduled Tribes

5. (1) As soon as may be after the commencement of this Act, the population as at the last census of the Scheduled Castes or, as the case may be, of the Scheduled Tribes, in each State shall be ascertained or estimated by the census authority.

(2) Where by reason of the amendments made by section 3 or section 4—

(a) any locality in a State specified in relation to any caste or tribe in any of the parts of the Schedules to the Orders referred to in the said sections is varied so as to specify a larger area in relation to such caste or tribe, the census authority shall take into account the population figures of the caste or tribe as ascertained in the last census and in any previous census wherein the population figures of the caste or tribe in respect of the increased area had been ascertained and determind the population of that caste or tribe as on the 1st day of April, 1971 by increasing or decreasing such figures by the proportion in which the general population of the State or, as the case may be, the division, district, taluk, tahsil, police station, development block or other territorial division in relation to which such caste or tribe has been specified by the said amendments has increased or decreased between the previous census aforesaid and the last census;

(b) any caste or tribe which is deemed to be both a Scheduled Caste and Scheduled Tribe in relation to a State or part thereof is varied so as to specify such caste or tribe only as a Scheduled Caste or Scheduled Tribe in relation to that State or part, the census authority shall take into account the population figures of such Scheduled Caste and Scheduled Tribe as ascertained in the last census:

Provided that it shall not be necessary for any census authority to determine the population of any Scheduled Caste or Tribe as on the 1st day of April, 1971, if the population of that caste or tribe was not

1- यह शासनादेश इलेक्ट्रानिकली जारी किया गया है, अत: इस पर हस्ताक्षर की आवश्यकता नही है।
2- इस शासनादेश की प्रमाणिकता वेब साइट http://shasanadesh.up.gov.in से सत्यापित की जा सकती है।

ascertained at the last census and in any of the previous consuses and is, in the opinion of that authority, numerically small.

Explanation.—Where the population figures of any caste or tribe in respect of any increased area referred to in clause (a) had been ascertained in more than one previous census, the census authority shall take into account, for the purposes of that clause, the population figures of such caste or tribe as ascertained in the previous census which is nearest in point of time to the last census.

(3) The population figures ascertained or determined under sub-section (2) shall be notified by the census authority in the Gazette of India.

(4) The population figures so notified shall be taken to be the relevant population figures as ascertained at the last census and shall supersede any figures previously published; and the figures so notified shall be final and shall not be called in question in any court.

Re-adjustment of constituencies by the Election Commission

6. (1) After the population figures have been notified for any State under section 5, it shall be the duty of the Commission to make such amendments as may be necessary in the Delimitation of Parliamentary and Assembly Constituencies Order, 1976, (without altering the extent of any constituency as given in such Order) having regard to the provisions of articles 81, 170, 330 and 332 of the Constitution, of section 8 of the Delimitation Act, and of this Act, for the purpose of giving proper representation to the Scheduled Castes or, as the case may be, to the Scheduled Tribes of that State on the basis of the number of reserved seats as specified in that Order as hereunder amended by the Commission, and the First Schedule and Second Schedule to the Representation of the People Act, 1950 shall be deemed to have been amended accordingly.

43 of 1950.

(2) In making any iamendments under sub-section (1), the Commission shall, as far as may be necessary, have regard to the provisions of clauses (c) and (d) of sub-section (1) of section 9 of the Delimitation Act.

(3) The Commission shall—

(a) publish its proposals for the amendments in the Gazette of India and the Official Gazette of the State concerned and also in such other manner as it thinks fit;

(b) specify a date on or after which such proposals will be further considered by it;

1- यह शासनादेश इलेक्ट्रानिकली जारी किया गया है, अत: इस पर हस्ताक्षर की आवश्यकता नही है।
2- इस शासनादेश की प्रमाणिकता वेब साइट http://shasanadesh.up.gov.in से सत्यापित की जा सकती है।

(c) consider all objections and suggestions which may have been received by it before the date so specified; and

(d) thereafter make the necessary amendments in the order.

Procedure and powers of the Commission.

7. (1) In the discharge of its functions under this Act, the Commission shall determine its own procedure and shall have all the powers of a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:— 5 of 1908.

(a) summoning and enforcing the attendance of witnesses;

(b) requiring the production of any document; and

(c) requisitioning any public record from any court or office.

(2) The Commission shall have the power to require any person to furnish any information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, any matter under the consideration of the Commission.

(3) The Commission shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973. 2 of 1974.

Explanation.—For the purpose of enforcing the attendance of witnesses, the local limits of the jurisdiction of the Commission shall be the limits of the territory of India.

Publication of amendments and their dates of operation.

8. (1) The Commission shall cause the amendments made by it in the Delimitation of Parliamentary and Assembly Constituencies Order, 1976 to be published in the Gazette of India and in the Official Gazettes of the States concerned.

(2) Upon publication in the Gazette of India, every such amendment shall have the force of law and shall not be called in question in any court.

(3) As soon as may be after such publication in the Gazette of India, every such amendment shall be laid before the House of the People and the Legislative Assemblies of the States concerned.

(4) Subject to the provisions of sub-section (5), the readjustment of representation of any territorial constituencies in the House of the People or in the Legislative Assembly of a State necessitated by any amendments made by the Commission in the Delimitation of Parliamentary and Assembly Constituencies Order, 1976 and provided for in that Order as so amended shall apply in relation to every election to the House or, as the case may be, to the Assembly, held after the publication in the Gazette of India under sub-section (1) of such amendments and shall so apply in supersession of the provisions relating to representation contained in the Representation of the People Act, 1950. 43 of 1950.

1- यह शासनादेश इलेक्ट्रानिकली जारी किया गया है, अत: इस पर हस्ताक्षर की आवश्यकता नही है।

2- इस शासनादेश की प्रमाणिकता वेब साइट http://shasanadesh.up.gov.in से सत्यापित की जा सकती है।

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(5) Nothing contained in the foregoing sub-sections shall affect the representation in the House of the People or in the Legislative Assembly of a State, existing on the date of publication in the Gazette of India under sub-section (1) of the amendments made by the Commission under this Act.

Certain other powers of Election Commission.

9. (1) The Commission may, from time to time, by notification in the Gazette of India and in the Official Gazette of the State concerned—

(a) correct any printing mistake in the Delimitation of Parliamentary and Assembly Constituencies Order, 1976 as amended under this Act, or any error occurring therein from any inadvertent slip or omission; and

(b) where the boundaries or the name of any district or any territorial division mentioned in the said Order are or is altered, make such amendments as appear to it to be necessary or expedient for bringing the Order up-to-date.

(2) Every notification under this section shall be laid, as soon as may be after it is issued, before the House of the People and the Legislative Assembly of the State concerned.

Validation of acts done previous to the commencement of the Act.

10. All things done, and all steps taken, before the commencement of this Act by the census authority for the determination of population of Scheduled Castes and Scheduled Tribes, or by the Commission for the purpose of re-adjustment of constituencies shall, in so far as they are in conformity with the provisions of this Act, be deemed to have been done or taken under these provisions as if such provisions were in force at the time such things were done or such steps were taken.

THE FIRST SCHEDULE

(*See* section 3)

In the Constitution (Scheduled Castes) Order, 1950—

(a) in paragraph 2, for the figures "XVII", the figures "XIX" shall be substituted;

(b) for paragraph 4, substitute—

"4. Any reference in this Order to a State or to a district or other territorial division thereof shall be construed as a reference to the State, district or other territorial division as constituted on the 1st day of May, 1976.";

1- यह शासनादेश इलेक्ट्रानिकली जारी किया गया है, अत: इस पर हस्ताक्षर की आवश्यकता नही है।
2- इस शासनादेश की प्रमाणिकता वेब साइट http://shasanadesh.up.gov.in से सत्यापित की जा सकती है।

PART XVIII.—*Uttar Pradesh*

1. Agariya
2. Badhik
3. Badi
4. Balmiki
5. Banjara
6. Bajgwar
7. Barjatiya
8. Bhangi
9. Bakshar
10. Bahti
11. Balmiki
12. Bangali
13. Bhumansus
14. Bansphor
15. Barwar
16. Bator
17. Bawariya
18. Beldar
19. Beriya
20. Bhakto
21. Bhuiya
22. Bhuyar
23. Borla
24. Chamar, Dhusia, Jhusia, Jatava
25. Chura
26. Dahgar
27. Dhangar
28. Dhanuk
29. Dharkar
30. Dhobi
31. Dom
32. Domar
33. Dusadh
34. Chouhan
35. Chaiya
36. Gond
37. Gual
38. Habura
39. Hari
40. Hela
41. Kalabaz
42. Kangar
43. Kapariya
44. Karwal
45. Khairahn
46. Kharwar (excluding Benbansi)
47. Khatik
48. Khorot
49. Kol
50. Kori
51. Korwa
52. Lalbagi
53. Majhwar
54. Mazhabi
55. Musahar
56. Nat
57. Pankha
58. Parahiya
59. Pasi, Tarmali
60. Patari
61. Rawat
62. Saharya
63. Sanauriya
64. Sansiya
65. Shilpkar
66. Turaiha

PART XIX.—*West Bengal*

1. Bagdi, Duley
2. Bauriya
3. Baiti
4. Bartia
5. Bauri
6. Beldar
7. Bhoria
8. Bhumiali
9. Bhunya
10. Bori
11. Chasar, Charmakar, Mochi, Muchi, Rabidas, Raidas, Rishi
12. Chaupal
13. Dangar
14. Dhanal (Nepali)
15. Dhoba, Dhobi
16. Doai
17. Dom, Dhangad
18. Dosadh, Dusadh, Dhari, Dharhi
19. Ghasi
20. Gondhi
21. Halalkhor
22. Hari, Mehtar, Mehter, Bhangi
23. Jalia Kaibartta
24. Jhalo Malo, Malo
25. Kadar

1- यह शासनादेश इलेक्ट्रानिकली जारी किया गया है, अत: इस पर हस्ताक्षर की आवश्यकता नही है।

2- इस शासनादेश की प्रमाणिकता वेब साइट http://shasanadesh.up.gov.in से सत्यापित की जा सकती है।

संलग्नक-5

Sl. No. 2(R)

Annexure-7

रजिस्ट्री सं. डी.एल. 33004 / 2003

REGISTERED NO. DL-33004/2003

भारत का राजपत्र
The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 10] नई दिल्ली, बुधवार, जनवरी 8, 2003/पौष 18, 1924

No. 10] NEW DELHI, WEDNESDAY, JANUARY 8, 2003/PAUSA 18, 1924

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 8th January, 2003/Pausa 8, 1924 (Saka)

The following Act of Parliament received the assent of the President on the 7th January, 2003 and is hereby published for general information:—

THE SCHEDULED CASTES AND SCHEDULED TRIBES ORDERS (AMENDMENT) ACT, 2002

No. 10 of 2003

[*7th January, 2003*]

An Act to provide for the inclusion in the lists of Scheduled Tribes, of certain tribes or tribal communities or parts of or groups within tribes or tribal communities, equivalent names or synonyms of such tribes or communities, removal of area restrictions and bifurcation and clubbing of entries; imposition of area restriction in respect of certain castes in the lists of Scheduled Castes, and the exclusion of certain castes and tribes from the lists of Scheduled Castes and Scheduled Tribes, in relation to the States of Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Goa, Gujarat, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Mizoram, Orissa, Sikkim, Tamil Nadu, Tripura, Uttar Pradesh and West Bengal:

Be it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

1. This Act may be called the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 2002. Short title.

1- यह शासनादेश इलेक्ट्रानिकली जारी किया गया है, अत: इस पर हस्ताक्षर की आवश्यकता नही है।

2- इस शासनादेश की प्रमाणिकता वेब साइट http://shasanadesh.up.gov.in से सत्यापित की जा सकती है।

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "Scheduled Castes Order" means the Constitution (Scheduled Castes) Order, 1950, made by the President under article 341 of the Constitution;

(b) "Scheduled Tribes Orders" means the Constitution (Scheduled Tribes) Order, 1950, the Constitution (Uttar Pradesh) Scheduled Tribes Order, 1967 and the Constitution (Sikkim) Scheduled Tribes Order, 1978, made by the President under article 342 of the Constitution.

Amendment of Scheduled Castes Order.

3. The Scheduled Castes Order is hereby amended in the manner and to the extent specified in the First Schedule.

Amendment of Scheduled Tribes Orders.

4. The Scheduled Tribes Orders are hereby amended in the manner and to the extent specified in the Second Schedule.

1- यह शासनादेश इलेक्ट्रानिकली जारी किया गया है, अत: इस पर हस्ताक्षर की आवश्यकता नही है।
2- इस शासनादेश की प्रमाणिकता वेब साइट http://shasanadesh.up.gov.in से सत्यापित की जा सकती है।

(*n*) in PART XVI.—*West Bengal*, after entry 38, insert—

"39. Limbu (Subba)

40. Tamang";

(*o*) in PART XVII.—*Mizoram*, after entry 14, insert "15. Paite";

(*p*) in PART XVIII.—*Arunachal Pradesh*,—

(*i*) in entry 8, at the end, insert ", Idu, Taroan";

(*ii*) after entry 12, insert—

"13. Hrusso

14. Tagin

15. Khamba

16. Adi.";

(*q*) in PART XIX.—*Goa*, after entry 5, insert—

"6. Kunbi

7. Gawda

8. Velip.";

(*r*) in PART XXII.—*Jharkhand*,—

(*i*) in entry 1, at the end, insert ", Agaria";

(*ii*) in entry 15, at the end, insert ", Dhelki Kharia, Dudh Kharia, Hill Kharia";

(*iii*) in entry 18, at the end, insert ", Nagesia";

(*iv*) in entry 19, at the end, insert ", Mudi-Kora";

(*v*) in entry 23, at the end, insert ", Kumarbhag Paharia";

(*vi*) in entry 24, at the end, insert ", Patar";

(*vii*) in entry 25, at the end, insert ", Dhangar (Oraon)";

(*viii*) after entry 30, insert—

"31. Kawar

32. Kol.".

(2) In the Constitution (Scheduled Tribes) (Uttar Pradesh) Order, 1967, after entry 5, insert—

"6. Gond, Dhuria, Nayak, Ojha, Pathari, Raj Gond (in the districts of Mehrajganj, Sidharth Nagar, Basti, Gorakhpur, Deoria, Mau, Azamgarh, Jonpur, Balia, Gazipur, Varanasi, Mirzapur and Sonbhadra)

7. Kharwar, Khairwar (in the districts of Deoria, Balia, Ghazipur, Varanasi and Sonbhadra)

1- यह शासनादेश इलेक्ट्रानिकली जारी किया गया है, अत: इस पर हस्ताक्षर की आवश्यकता नही है।
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8. Saharya (in the district of Lalitpur)
9. Parahiya (in the district of Sonbhadra)
10. Baiga (in the district of Sonbhadra)
11. Pankha, Panika (in the districts of Sonbhadra and Mirzapur)
12. Agariya (in the district of Sonbhadra)
13. Patari (in the district of Sonbhadra)
14. Chero (in the districts of Sonbhadra and Varanasi)
15. Bhuiya, Bhuinya (in the district of Sonbhadra).".

(3) In the Constitution (Sikkim) Scheduled Tribes Order, 1978, after entry 2, insert—

"3. Limboo
4. Tamang.".

K. N. CHATURVEDI,
Additional Secy. to the Govt. of India.

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